

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

14-0053R

AS AMENDED

RESOLUTION AUTHORIZING JOINT POWERS AGREEMENT WITH THE STATE OF MINNESOTA, IN AN AMOUNT NOT TO EXCEED \$5,000, FOR THE REMOVAL AND PROPER DISPOSAL OF SUSPECTED EMERALD ASH BORER INFESTED ASH TREES.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a joint powers agreement, substantially the same as that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with the state of Minnesota, department of agriculture, for the sampling of Ash trees during the non-flight season for Emerald Ash Borer, to contribute to a study on detection methods for EAB ~~removal and disposal of suspected emerald ash borer infested trees and portions of trees~~ through June 30, 2014; and accept reimbursement for said services in an amount not exceed \$5,000, funds to be deposited in Fund Number 110-121-1217-2145-4654 (general fund - park maintenance).

MAINT/ATTY      GBJ:de      1/14/2014

STATEMENT OF PURPOSE: This resolution authorizes a joint powers agreement with the state of Minnesota, department of agriculture pursuant to a grant from the environmental and natural resources trust fund, under which agreement the city shall perform services to remove and properly dispose of suspected Emerald Ash Borer infested trees and portions of trees within the city through June 30, 2014. The city of Duluth will accept reimbursement for these services in an amount not to exceed \$5,000.

## STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its commissioner of agriculture ("State") and the City of Duluth ("Governmental Unit").

### Recitals

Under Minn. Stat. § 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of removal and proper disposal of suspected emerald ash borer (EAB) infested ash trees and portions of trees in the City of Duluth. There are ash trees that will require sampling during the non-flight season for emerald ash borer, to contribute to a study on detection methods for EAB. The Department of Agriculture has received a grant from the Environmental and Natural Resources Trust Fund with funding to reimburse the City of Duluth to perform this needed service.

### Agreement

#### 1 Term of Agreement

- 1.1 **Effective date:** November 1, 2013, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** June 30, 2014, with an option to extend 2 additional years if approved by all parties or until all obligations have been satisfactorily fulfilled, whichever occurs first.

#### 2 Agreement between the Parties

1. The Governmental Unit agrees to furnish and transport all labor, equipment, and materials necessary to remove, provide for sampling and then proper disposal of indicated branches and trees as designated by the State. The Governmental Unit will also obtain all necessary insurance, licenses, permits, payment of fees, taxes and administration associated with the performance of this work.
2. The Governmental Unit agrees to have on-site supervisory personnel present at the work site while the work is being performed. The State and the Governmental Unit will identify the branches and trees to be removed by size and number. General work will include and the Governmental Unit agrees to:
  - a) Remove ash trees or portions of ash trees as designated by the State.
  - b) Provide samples of ash trees or portions of ash trees that the State can sample for the presence of EAB.
  - c) Grind out each tree stump to 10" below grade and remove all of the surrounding surface roots within 36" of the circumference of the existing tree stump. Excavate and backfill the stump hole(s) with soil so that it is even with the surrounding terrain. However, stumps in natural areas do not need to be removed and can simply be cut close to grade.
  - d) Pick up and dispose of all fallen branches in areas of tree, yard and surrounding areas. Clean, sweep, and restore to the condition existing prior to the removal operations all areas of paving, lawns, walkways, sidewalks, fixtures, fences, etc. that have been damaged, dirtied, altered or displaced by the tree, or stump removal work. All debris shall be removed from the site.
  - e) Transport all tree(s), stump(s) and chipped material and debris to closest disposal site or as directed by the State.
  - f) Trees and branches will be removed using acceptable industry practices for such removal. Governmental Unit agrees that driveways and alleys are not to be blocked with generated tree or stump debris beyond the time to complete required work on that site.
  - g) The Governmental Unit agrees to perform the work with due care taking precautions against injury to persons, damage to property and interference with vehicular or pedestrian traffic. The

Governmental Unit agrees to take necessary precautions to ensure the safety of all persons engaged in the work of this contract. The Governmental Unit agrees to protect against damage to all existing trees, plants, grass, vegetation and other fixtures.

- h) The Governmental Unit will be responsible for notifying the public utility companies (i.e. telephone, electric, gas, and cable) when needed to ensure the safe removal of the tree to avoid causing fires, shocks or sparks damage to wires, cables, poles, boxes or other equipment owned or operated by the public utility companies. The Governmental Unit will also be responsible for notifying the utility companies as to when service can be restored and to cooperate with the utility companies to ensure service is restored prior to nightfall each day.
- i) The Government Unit agrees that equipment, ladders, saws, chippers and tools will not be left unattended. On a nightly basis all equipment and tools will be stored in such manner to ensure that residents and the public do not have access to them.

### 3 Payment

The State will pay for the total work, plus applicable tax, upon completion of services and receipt of invoice by the Government Unit pursuant to M.L. 2013, Chp.52, Sec. 2, Subd.06cA for the period of 11/1/2013 thru 6/30/2014 up to \$5,000 including tax.

The total obligation of the State under this agreement will not exceed \$5,000.

### 4 Authorized Representatives

The State's Authorized Representative is Kimberly Thielen Cremers, State CAPS Program Coordinator, Plant Protection, 625 Robert St W, St Paul, MN 55108, 651-201-6549, [kimberly.tcremers@state.mn.us](mailto:kimberly.tcremers@state.mn.us), or his/her successor.

The Governmental Unit's Authorized Representative is Dale Sellner, Buildings & Grounds Maintenance Supervisor, 110 N 42<sup>nd</sup> Ave W, Duluth MN 55806, (218) 730-4303 [dsellner@duluthmn.gov](mailto:dsellner@duluthmn.gov), or his/her successor.

### 5 Assignment, Amendments, Waiver, and Contract Complete

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

### 6 Liability

The Governmental Unit will indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by the Governmental Unit or the Governmental Unit's agents or employees. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligations under this agreement.

### 7 State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

### 8 Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this Clause, the Governmental Unit must immediately notify the State. The State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

**9 Venue**

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**10 Termination**

**10.1 Termination.** The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

**10.2 Termination for Insufficient Funding.** The State may immediately terminate this agreement if federal grant funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed: Sinda K Rowley

Date: 11/18/13

CFMS Contract No. A- 71410 3(4)10281

**3. STATE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. GOVERNMENTAL UNIT - CITY OF DULUTH**

By: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

~~By:~~ \_\_\_\_\_

Title: City Clerk

~~Date:~~ Countersigned: \_\_\_\_\_

City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney

Distribution:  
Agency  
Governmental Unit

CFMS Contract No. \_\_\_\_\_

State's Authorized Representative - Photo Copy